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FISCAL IMPACT STATEMENT

LS 6893

BILL NUMBER: HB 1514

NOTE PREPARED: May 1, 2009

BILL AMENDED: Apr 29, 2009

SUBJECT: Local Government.

FIRST AUTHOR: Rep. GiaQuinta

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Accounting for Public Funds:* This bill requires a deputy examiner, field examiner, or private examiner to make a preliminary report to the State Examiner if: (1) a substantial amount of public funds has been misappropriated or diverted or is unaccounted for; (2) there is a reasonable likelihood that the final examination report will include a finding that the entity that is the subject of the report failed to observe a uniform compliance guideline or failed to comply with a specific law; or (3) the malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds. The bill requires the State Examiner to provide a copy of the report to the Attorney General, and authorizes the Attorney General to bring a civil action against the delinquent employee or the official bond to recover misappropriated funds. It also authorizes the Attorney General to attach the assets of the delinquent employee.

Electronic Filing of Financial Reports: The bill specifies that the State Board of Accounts may require the use of an electronic, automated, or computerized system of accounting or reporting.

Public Works Contracts: The bill provides that a political subdivision may award a contract for public work under the procurement law for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost is estimated to be less than \$150,000.

Allen County-Fort Wayne Capital Improvement Board (CIB): The bill changes the name of the Fort Wayne-Allen County Convention and Tourism Authority to the Allen County-Fort Wayne Capital Improvement Board of Managers (Allen County-Fort Wayne CIB). It removes the limitation on county appointments to the Allen County-Fort Wayne CIB having to live in the unincorporated area of the county. It requires the

executive director of the Allen County Memorial Coliseum to file an annual report of operations with the Allen County-Fort Wayne CIB. It also requires the executive manager of the Allen County-Fort Wayne CIB to file an annual report of operations with the Allen County-Fort Wayne CIB.

Allen County Food and Beverage Tax: The bill provides that any Food and Beverage Tax revenue in Allen County that is received after December 31, 2009, and is not needed for debt payments on the coliseum is to be transferred to the Allen County-Fort Wayne CIB and provides that the excess revenue may not be used to provide funding for improvements initiated before January 1, 2009, as part of the Harrison Square project or for operational expenses. It changes the allocation of excess Allen County Food and Beverage Tax revenue so that the Allen County-Fort Wayne CIB receives all the excess revenue. The bill provides that, after June 30, 2009, the Allen County-Fort Wayne CIB must approve any Food and Beverage Tax pledge for bonds, loans, or leases. It also repeals superseded provisions of the Allen County Food and Beverage Tax.

Allen County Professional Sports Development Area (PSDA) Expansion and Capture Limit Increase: The bill adds the facilities at the Indiana University-Purdue University at Fort Wayne (IPFW) campus to the Allen County PSDA. It removes the \$5 per person state revenue cap for the Allen County PSDA. It provides that the maximum amount of covered local and state taxes that may be captured in Allen County is \$3 M. It also provides that Allen County receives the first \$2.6 M of captured tax revenue each year for deposit in the supplemental coliseum expansion fund and the Allen County-Fort Wayne CIB receives the remainder.

Vanderburgh County Innkeeper's Tax: The bill provides that the part of the Vanderburgh County Innkeeper's Tax rate that is dedicated to pay the operating expenses of a convention center is reduced from 2% to 1% after December 31, 2014 (rather than after December 31, 2009, under current law). It also provides for a corresponding delay in the increase in the part of the Vanderburgh County Innkeeper's Tax rate that is deposited in the Tourism Capital Improvement Fund.

Use of Vanderburgh County Food and Beverage Tax: The bill specifies that if the Vanderburgh County Council adopts a resolution providing that the Vanderburgh County Food and Beverage Tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, any excess Food and Beverage Tax revenue that is not needed to pay any bonds, leases, or other obligations for a convention center shall be transferred to the fiscal officer of Evansville for deposit in an Evansville Arena Fund. It provides that money in the Evansville Arena Fund shall be used for financing the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities. It specifies that if the Vanderburgh County Council adopts a resolution providing that the Vanderburgh County Food and Beverage Tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the Food and Beverage Tax: (1) does not terminate after the last of the bonds issued to finance improvements to the Vanderburgh County auditorium or auditorium renovations, and the last of any bonds issued to refund those bonds, have been completely paid; and (2) continues until the last of the bonds issued to finance the acquisition, construction, and equipping of the Evansville arena and other facilities that serve or support the arena activities, and the last of any bonds issued to refund those bonds, have been completely paid. The bill also repeals provisions specifying that the amounts received from the Vanderburgh County Food and Beverage Tax shall be used to pay bonds issued to finance the construction of an airport terminal.

Monroe County Food and Beverage Tax: The bill permits Monroe County to impose a county food and beverage tax of 1% of the gross retail income received by a food and beverage merchant. It also establishes a local advisory commission to assist and coordinate efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax revenue.

Martinsville Food and Beverage Tax: The bill eliminates the expiration date in the Martinsville Food and Beverage Tax by which the city of Martinsville may initiate projects funded by food and beverage tax revenues. It also permits Martinsville to fund sewer improvements with the Martinsville Food and Beverage Tax.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Accounting for Public Funds- State Board of Accounts (SBOA):* This bill allows the SBOA to fix the amounts of surety bonds for certain local officials at \$30,000 for each \$1 M of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. The amount must be at least \$30,000 in annual coverage, but not more than \$300,000. If the State Examiner finds that certain local officials have engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds, an increased bond amount may be established.

The bill requires deputy examiners, field examiners, or private examiners to make reports to the State Examiner when a substantial amount of public funds has been misappropriated or diverted and there is a reasonable belief that the malfeasance or misfeasance that resulted in the misappropriation or diversion of public funds was committed by the officer or an employee of the office. These reports may be provided to the Attorney General. An average of 20-25 such reports were provided to the Attorney General during 2005-2008. These provisions may increase administrative costs for the SBOA. As of April 27, 2009, the SBOA had 10 vacant positions.

Attorney General: This bill provides that the Attorney General may bring a civil action against delinquent employees or the official bond to recover misappropriated, diverted, or unaccounted funds. It is unknown how this provision will impact the Attorney General's office, because the impact will depend on the extent that civil actions are necessary based upon findings from reports by the SBOA.

Explanation of State Revenues: *Accounting for Public Funds - Court Fee Revenue:* The impact on civil actions is indeterminable, and would depend on the extent that findings that officials were engaged in the acts that would be included in reports to the Attorney General from the SBOA. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Allen County PSDA Expansion and Capture Limit Increase: The bill adds to the Allen County PSDA facilities located at IPFW. In addition, the bill eliminates the capture limit for state tax revenue by the Allen County PSDA, which had been \$5 per county resident. Instead, the bill establishes an overall capture limit for state income and sales tax revenue and county option income tax equal to \$3 M per year. The bill also requires that the county option income tax revenue that is captured by the PSDA must be counted first toward this limit. The capture limit currently only applies to state income tax and sales tax and is currently \$1,659,245. In FY 2008, the Allen County PSDA met the current capture limit for the first time. The extent to which the Allen County PSDA is able to capture additional revenue under the new capture limit is unknown and depends on revenue growth in the existing PSDA as well as the additional revenue that IPFW

facilities will yield. The maximum additional revenue loss to the state would be \$1.3 M annually.

The bill also provides for distribution of the captured revenue. It requires that Allen County receive the first \$2.6 M of captured tax revenue each year for deposit in the supplemental coliseum expansion fund and the Allen County-Fort Wayne CIB receive the remaining \$400,000.

Explanation of Local Expenditures: *Accounting for Public Funds - Surety Bond Increases:* This bill increases the amount of surety bonds that are required to be filed by local government officials. The bill increases the amounts from \$15,000 to \$30,000 for each \$1 M of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. The amount must be at least \$30,000 in annual coverage, but not more than \$300,000 unless the respective fiscal bodies approve a greater amount of annual coverage. This change applies to the following officials: city controllers; city clerk-treasurers; town clerk-treasurers; Barrett Law fund custodians; county treasurers; county sheriffs; circuit court clerks; township trustees; conservancy district financial clerks; and controllers of solid waste management districts.

The amount of surety bonds that must be filed by any other individual is changed from at least \$8,500 to \$15,000 in annual coverage.

These amounts must be fixed by the fiscal bodies of the respective units affected by this bill, unless they are fixed by the SBOA. Their current level of resources should be sufficient to implement the provisions of this bill. IC 5-4-1-8 states the following:

The official bonds of officers, if sufficient, shall be approved as follows:

- (1) Of county officers required to give bonds, by the clerk of the circuit court unless otherwise specified in this section.
- (2) Of county sheriff, county coroner, county recorder, county auditor, county treasurer, and clerk of the circuit court, by the county executive.
- (3) Of county assessor, township trustee, and township assessor (if any), by the county auditor.
- (4) Of city officers, except the executive and members of the legislative body, by the city executive.
- (5) Of members of the board of public works or of the board of public works and safety in cities, by the city legislative body.
- (6) Of clerk-treasurer and marshal of a town, by the town legislative body.
- (7) Of a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal), by the board of directors of the solid waste management district.
- (b) A person who approves an official bond shall write the approval on the bond.
- (c) A bond must be approved before it is filed.

Electronic Filing of Financial Reports: This bill requires that the annual financial reports filed with the State Examiner from municipalities and every state or local governmental unit, entity, or instrumentality must be filed electronically within 60 days after the close of each fiscal year. Any additional costs may be minimal because the bill specifies that the reports must be filed electronically in a manner that is compatible with the technology employed by the political subdivision.

Public Works Contracts: This bill provides that political subdivisions may award contracts for public works under the state procurement statutes (IC 5-22) for the routine operation, repair, or maintenance of existing structures, buildings, or real property if the cost is estimated to be less than \$150,000. Currently, these projects would be governed by the public work projects statutes (IC 36-1-12).

Under the public work projects statutes, the cost of the project determines the applicable requirements for a project. All public works projects have certain statutory requirements that must be satisfied before contracts may be awarded for a project. Generally, the state procurement statutes govern purchasing and not installation, and may not account for system and design compatibility. Further, IC 36-1-12-7 specifies that public works performed or contracted for on a public building costing more than \$100,000 may be undertaken only in accordance with plans and specifications approved by licensed architects or engineers. The state procurement statutes do not contain this requirement.

Allen County-Fort Wayne Capital Improvement Board (CIB): This bill changes the name of the Fort Wayne-Allen County Convention and Tourism Authority to the Allen County-Fort Wayne Capital Improvement Board. The bill also requires the executive manager of the CIB to file an annual report of operations.

Use of Vanderburgh County Food and Beverage Tax: If the Vanderburgh County fiscal body were to adopt a resolution to continue the Food and Beverage Tax for an arena project, the county treasurer would determine if any tax revenue were left over from bonds in existence on January 1, 2009, or earlier. If revenue was not committed to those prior bonds, the Treasurer of State would transfer the revenue to the Evansville city controller (fiscal officer). The city controller would place Vanderburgh County Food and Beverage Tax revenue into the Municipal Arena Fund. If the tax were continued for the arena, Evansville would be able to issue bonds or enter into leases for the project. These bonds could not exceed a term of 30 years. If the county treasurer were to certify to the Treasurer of State that all bonds for improvements on the county auditorium had been paid in full, amounts received from the tax from the Treasurer of State would be placed into the Municipal Arena Fund. Evansville could also issue bonds in lieu of arena bonding for any special taxing district, agency, department, instrumentality, or law under which bonds may be issued, leases entered, and obligations incurred. Bonds for these purposes would have a term ending no later than 30 years after the first February 1 following the estimated date of the arena completion.

Explanation of Local Revenues: *Accounting for Public Funds - Court Fee Revenue:* If the number of civil actions filed is impacted, local governments could receive additional revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Allen County Food and Beverage Tax: This bill transfers all of the excess Allen County Food and Beverage Tax that is not needed to pay obligations (bond, loan, or lease) to the Allen County-Fort Wayne CIB. The board will then deposit these funds into a reserve account. Funds in the reserve account may not be withdrawn or transferred during the year they are received, except to make transfers to the county for obligations. The bill limits the CIB to using the excess revenue for a project initiated after December 31, 2008, and prohibits the CIB from using the excess revenue to provide funding for improvements initiated before January 1, 2009, as part of the Harrison Square project or to pay operational expenses for any facilities of the municipality. The bill also enables the CIB to transfer interest from the reserve account and amounts on deposit for more than 12 months to the Capital Improvement Fund. Beginning in FY 2010, the Board must approve any Food and Beverage Tax pledge for bonds, loans, or leases. Revenue from the Food and Beverage Tax totaled about \$5.5 M in FY 2008.

Vanderburgh County Innkeeper's Tax: This provision would delay for five years the revenue equivalent to

a 1% rate that the Tourism Capital Improvement Fund was scheduled to receive after December 31, 2009. The bill would also delay the reduction (from a 2% rate to a 1% rate) of the amount deposited into the Convention Center Operating Fund (CCOF). Under current law, the amount of innkeeper's tax revenue deposited in the CCOF would be reduced by 1% after December 31, 2009. Under the bill, the reduction would be postponed until after December 31, 2014. Vanderburgh County collected about \$3.3 M in innkeeper's taxes during FY 2008. The current tax rate is 8%. A 1% rate would equate to approximately \$408,000 of FY 2008 revenue.

Vanderburgh County Food and Beverage Tax: Revenue from the Vanderburgh County Food and Beverage Tax would continue to be collected if the conditions specified in the bill were fulfilled. Food and Beverage Tax revenue is currently paying for bonds to cover costs of renovation and improvements to the county auditorium. The following table illustrates a recent collection history of the tax.

Vanderburgh County Food & Beverage Tax Revenues	
Fiscal Year	Tax Revenue
FY 2008	\$3.7 M
FY 2007	\$3.6 M
FY 2006	\$3.6 M
FY 2005	\$3.3 M
FY 2004	\$3.1 M
Five-Year Average	\$3.5 M

Vanderburgh County Food and Beverage Tax revenues are currently being used to pay for bonding for the improvements to the county auditorium (renamed the Centre), with approximately \$23.735 M remaining in principal payments. The current debt service schedule for the Centre indicates payment will take nine and one-half additional state fiscal years to complete. The annual bond payment is approximate to the average revenue from the tax over the last five state fiscal years.

Monroe County Food and Beverage Tax: Assuming an ordinance effective date of upon passage, a 1% Food and Beverage Tax in Monroe County could yield approximately \$0.9 M in CY 2009, \$2.3 M in CY 2010, and \$2.5 M in CY 2011. However, the actual revenue amounts would depend on the effective date of the ordinance. It is estimated that 87.9% of all Monroe County food and beverage establishments are located within Bloomington. Therefore, if 87.9% of the revenue generated from the proposed countywide tax went to Bloomington, the city could see an estimated \$2.1 M in CY 2010 (assuming a full year of collections) and \$2.2 M in CY 2011. The remaining revenue would be retained by the county.

Martinsville Food and Beverage Tax: The bill eliminates the 2015 deadline to begin projects funded by the Martinsville Food and Beverage Tax and allows tax revenue to be used for sanitary sewer system projects. These changes could affect the future use of the tax revenue on authorized projects. Current statute limits use of the revenue to city hall renovation, police or fire station construction, sanitary sewer or wastewater treatment facility improvement, storm water drainage systems improvement, and other projects involving the city's water system or protecting the city's well fields.

State Agencies Affected: SBOA; Attorney General.

Local Agencies Affected: Circuit court clerks; County executives; County auditors; City executives; Town legislative bodies; Boards of directors of solid waste management districts; City controllers; City-Clerk treasurers; Town-Clerk treasurers; Barrett Law Fund custodians; County treasurers; County sheriffs; Township trustees; Conservancy financial clerks; political subdivisions; Allen County; City of Fort Wayne; Fort Wayne-Allen County Convention and Tourism Authority; Vanderburgh County; City of Evansville; Monroe County; City of Martinsville.

Information Sources: LeGrand Clark, Attorney General's Office; *Indiana Handbook of Taxes, Revenues, and Appropriations*; City of Evansville Controller's Office, Indiana Economic Digest, www.indianaeconomicdigest.net.

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